

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN,)
)
Plaintiff(s),)
)
v.)
)
ALVIN FLORIDA, JR., et al.,)
)
)
Defendant(s).)
_____)

No. C08-5216 BZ

**ORDER ON DEFENDANTS' MOTION
TO DISMISS PLAINTIFF'S
SECOND, THIRD, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH, AND
TENTH CAUSES OF ACTION**

On November 18, 2008, plaintiff John Brosnan ("plaintiff"), proceeding in *pro se*, filed a complaint against defendants Alvin Florida Jr. ("Florida"), Realty Info Systems, and Monetary Recovery Service, Inc. (collectively "defendants").¹ Plaintiff's complaint alleges ten causes of action² for: (1) battery; (2) slander; (3) libel; (4) property damage; (5) intentional interference with prospective economic

¹ All parties have consented to my jurisdiction, including entry of final judgment, pursuant to 28 U.S.C. § 636(c) for all proceedings.

² The first four causes of action are brought against defendant Florida, and the other six causes of action are brought against all defendants.

1 advantage; (6) false imprisonment; (7) false arrest; (8) civil
 2 conspiracy; (9) bid chilling; and (10) violation of Cal. Bus.
 3 & Prof. Code § 172000. Defendants move to dismiss plaintiff's
 4 second, third, fifth, sixth, seventh, eighth, ninth, and tenth
 5 causes of action pursuant to Federal Rule of Civil Procedure
 6 12(b)(6).

7 Defendants argue that plaintiff's second, third, fifth,
 8 sixth, seventh, and eighth causes of action should be
 9 dismissed because defendant Florida's verbal and written
 10 statements to the police are absolutely privileged pursuant to
 11 Cal. Civ. Code Section 47(b), and therefore cannot form the
 12 basis for any of the alleged torts.³

13 In California, the absolute privilege found in Section
 14 47(b) of the California Civil Code, protects statements to the
 15 police from litigation, even when false. See Hagberg v.
 16 California Federal Bank FSB, 32 Cal.4th 350, 365 (2004)
 17 (citing Cabesuela v. Browning-Ferris Industries of California,
 18 Inc., 68 Cal.App.4th 101, 112 1998) ("Section 47 gives all
 19 persons the right to report crimes to the police, the local
 20 prosecutor or an appropriate regulatory agency, even if the
 21 report is made in bad faith."). Section 47(b)'s absolute
 22

23 ³ Section 47(b) bars a civil action for damages based
 24 on statements made in any judicial proceeding, in any official
 25 proceeding authorized by law, or in the initiation or course of
 26 any mandate-reviewable proceedings authorized by law. The
 27 litigation privilege provided in Section 47(b) applies to any
 28 communication (1) made in judicial or quasi-judicial
 proceedings; (2) by litigants or other participants authorized
 by law; (3) to achieve the objects of the litigation; and (4)
 that have some connection or logical relation to the action.
A.F. Brown Elec. Contractor, Inc. v. Rhino Elec., 137
 Cal.App.4th 1118 (2006).

1 privilege applies to "communications intended to instigate
 2 official investigation into [suspected] wrongdoing" such as
 3 communications made to police officers. Hagberg, 32 Cal.4th
 4 at 369. Section 47(b) establishes an absolute privilege for
 5 such statements and bars all tort causes of action based on
 6 them, except a cause of action for malicious prosecution.⁴
 7 Id. at 360.

8 Defendants' motion to dismiss the second cause of action
 9 for slander, the third cause of action for libel, the sixth
 10 cause of action for false imprisonment, the seventh Cause of
 11 action for false arrest, and the eighth cause of action for
 12 civil conspiracy is therefore **GRANTED** on the ground that
 13 statements defendants made to the police are protected by the
 14 absolute privilege set forth in California Civil Code §
 15 47(b).⁵

16 Defendants next argue that plaintiff's fifth cause of
 17 action for intentional interference with prospective economic
 18 advantage should be dismissed. "The tort of intentional
 19 interference with prospective economic advantage imposes
 20 liability for improper methods of disrupting or diverting the
 21

22 ⁴ Plaintiff has not pled a claim for malicious
 23 prosecution, and it is not clear from the facts alleged that he
 24 was ever prosecuted. See Sheldon Appel Co. v. Albert & Olier,
 47 Cal.3d 863, 871-72 (1989) (setting forth elements of a claim
 for malicious prosecution).

25 ⁵ Plaintiff cites to a variety of cases, such as Miller
 26 v. Fano, 134 Cal. 103 (1901) and Devis v. Bank of America, 65
 27 Cal.App.4th 1002 (1998) for the proposition that statements
 28 made to police are subject only to a qualified privilege, and
 are not protected by that privilege if they are made with
 malice. Miller, however, was expressly disapproved in Hagberg,
 as were the authorities upon which the Devis court relied. See
Hagberg, 32 Cal.4th at 369, 371-375, n.8.

1 business relationship of another which fall outside the
2 boundaries of fair competition." Settimo Associates v.
3 Environ Systems, Inc., 14 Cal.App.4th 842, 845 (1993). In
4 order to state a cause of action for intentional interference
5 with prospective economic advantage, a plaintiff must plead
6 the following elements: (1) an economic relationship which
7 offered the probability of future economic benefit to
8 plaintiff; (2) defendants' knowledge of this relationship; (3)
9 defendants' intentional acts designed to disrupt that
10 relationship; (4) actual disruption of the relationship; and
11 (5) economic harm to plaintiff proximately caused by
12 defendants' acts. Reeves v. Hanlon, 33 Cal.4th 1140, 1152 n.6
13 (2004) (citing Youst v. Longo, 43 Cal.3d 64, 71 n.6 (1987)).
14 Here, plaintiff has alleged that he attended the trustee's
15 sale with the intention of bidding, that defendants assaulted
16 him for the purpose of preventing him from bidding and were
17 successful in that the sale occurred while he was detained by
18 the police. Construing these allegations liberally in
19 plaintiff's favor, he states a claim. Questions about how
20 likely it was that plaintiff would have been the successful
21 bidder can best be handled on summary judgment. Defendants'
22 motion to dismiss plaintiff's fifth cause of action for
23 intentional interference with prospective economic advantage
24 is therefore **DENIED**.

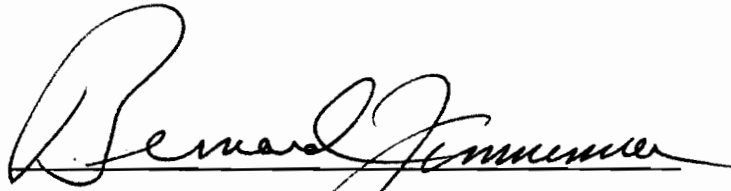
25 Defendants also argue that plaintiff's ninth and tenth
26 causes of action for "bid chilling" and unfair business
27 practices, respectively, should be dismissed. Plaintiff cites
28 neither a statute nor any applicable authority for his ninth

1 cause of action for "bid chilling", and the Court was unable
2 to find any. Defendants' motion to dismiss plaintiff's ninth
3 and tenth causes of action is therefore **GRANTED**.

4 I find no need for argument and **VACATE** the hearing set
5 for March 25, 2009. If he wishes to amend, plaintiff shall do
6 so by **April 9, 2009**. Defendants shall answer or otherwise
7 respond by **April 30, 2009**.

8 It is so **ORDERED**.

9 Dated: March 23, 2009

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11 
12 Bernard Zimmerman
13 United States Magistrate Judge
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